

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 6, 2007

D048892 People v. Layton

The conviction of marijuana cultivation (Health & Saf. code, § 11358; count 1) is reversed and the matter remanded for the trial court to grant the motion to suppress; in all other respects the judgment is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D049208 In re Christopher G., a Juvenile

The judgment is reversed and the matter is remanded for further proceedings in accordance with this opinion. McIntyre, J.; We Concur: McDonald, Acting P.J., Irion, J.

D049893 In re Marriage of Perez

The order is affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., Irion, J.

D042623 People v. Vasquez

The sentence is vacated and the matter remanded to the trial court for resentencing consistent with this opinion. In all other respects, the judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Irion, J.

D047821 People v. Briceno

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D050335 In re Miranda H., a Juvenile

The order is affirmed. Huffman, J.; We Concur: McConnell, P.J., Irion, J.

D050210 In re Erick S., a Juvenile

The order is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D051090 In re Evans on Habeas Corpus

The petition is denied.

D050860 In re Powell on Habeas Corpus

The petition is denied.

D051279 In re Hawkins on Habeas Corpus

The petition is denied.

D050927 In re Rothwell on Habeas Corpus

The petition is denied.

D050937 Taylor-Frager, Inc. v. Superior Court of San Diego County/Southern California Presbyterian Homes

The petition for writ of mandate and request for stay have been read and considered by Justices Haller, McIntyre and O'Rourke. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 6, 2007 (Continued)

D050850 In re Giedeman on Habeas Corpus

The petition is denied.

D050353 Doe et al. v. Biovail Corporation et al.

Appellant has failed to file a brief after notice was given under California Rules of Court, rule 8.220(a). The appeal is DISMISSED.

D050984 In re Hale on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Haller, McIntyre, and O'Rourke. Petitioner contends his sentence violates the United States Supreme Court's decision in *Blakely v. Washington* (2004) 542 U.S. 296, as applied to California's sentencing scheme by *Cunningham v. California* (2007) 549 U.S. ____, 127 S. Ct. 856, 871. However, the *Blakely* decision does not apply retroactively to cases, such as petitioner's, that are final or are before the court on collateral review. (*In re Consiglio* (2005) 128 Cal.App.4th 511, 516; *Schardt v. Payne* (2005) 414 F.3d 1025, 1036.) The petition is denied.

D050864 In re Crain on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Haller, McIntyre, and O'Rourke.

Regarding petitioner's claims under *Blakely v. Washington* (2004) 542 U.S. 296, as applied to California's sentencing scheme in *Cunningham v. California* (2007) 549 U.S. ____, 127 S. Ct. 856, 871, the *Blakely* decision does not apply retroactively. (*In re Consiglio* (2005) 128 Cal.App.4th 511, 516; *Schardt v. Payne* (2005) 414 F.3d 1025, 1036.) In addition, petitioner's sentence was increased because of strike priors and serious felony priors. The *Blakely* decision does apply to sentence increases that are based on the fact of a prior conviction. (*Blakely*, supra, 542 U.S. at p. 301.)

Regarding petitioner's other claims, the petition is procedurally barred because it is untimely, repetitive, and successive, and petitioner has not established any exception to these procedural bars. (*In re Clark* (1993) 5 Cal.4th 750, 765, 767-768, 783, 797-798.)

The petition is denied.

D050266 Tucker v. Grossmont Union High School District

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.

D050985 In re Coleman on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 7, 2007

D049090 McKean Natural Gas Company et al. v. City of San Diego

The judgment is affirmed. The City is entitled to costs on appeal. McConnell, P.J.;
We Concur: Huffman, J., Irion, J.

D050480 In re J.R. et al., Juveniles

The order is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D050354 People v. Howard

Judgment affirmed. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

D050128 Robb v. Starbucks Corporation

Upon filing a written abandonment of appeal, the appeal is DISMISSED and the remittitur is ordered to issue immediately.

D047896 In re Marriage of Feldman

The opinion filed July 20, 2007, is ordered certified for publication.

D050834 People v. Perez

Appellant Alfonso V. Perez has personally signed an abandonment of his appeal, filed by counsel on August 3, 2007. The appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D051377 Mahdavi v. Superior Court of San Diego County/People

The petition is denied. The motion to recuse is denied as moot.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 8, 2007

D050040 In re Marriage of Sondoozi

Upon written stipulation filed by the parties to the appeal, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D050804 In re Valeria U.H., a Juvenile

The appeal is dismissed. McDonald, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D049490 In re Sylvia R., a Juvenile

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D050896 Alexandra S. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D050775 In re T.L., a Juvenile

The appeal is dismissed. McIntyre, J.; We Concur: Haller, Acting P.J., Irion, J.

D050448 In re Alliyah H., a Juvenile

The judgment terminating parental rights is reversed. The matter is remanded to the juvenile court with directions that it requires the Agency to provide proper notice to any prospective tribes and the BIA, and file with the court the notices, return receipts, and any responses; and hold a new permanency hearing under section 366.26.

If, at the permanency plan hearing, the court determines ICWA notice was proper and no Indian tribe seeks to intervene or otherwise indicates the child is an Indian child as defined by ICWA, the court shall reinstate its findings and orders terminating parental rights. If, on the other hand, an Indian tribe determines that the child is an Indian child under ICWA, the court shall conduct the jurisdiction, disposition, and all subsequent hearings in accordance with ICWA and applicable state law. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D050597 In re Alex M., a Juvenile

The appeal is dismissed. Haller, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D049905 Searles Valley Minerals v. State Board of Equalization

Upon written stipulation filed by the parties to the cross-appeal, the cross-appeal is dismissed and the remittitur is ordered to issue immediately as to the cross-appeal only.

D050857 In re Coranes on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 8, 2007 (Continued)

D047058 Helleis v. 350 W.A. et al.

The petition for rehearing is denied.

D050481 In re Tristan R., a Juvenile

The judgment is affirmed. Benke, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D049292 People v. Truong

The judgment of the trial court is affirmed. Aaron, J.; We Concur: Nares, Acting P.J., Haller, J.

D049438 Amador v. San Country Club et al.

The request for publication of the opinion is denied.

D051179 Kimberly F. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jorge C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D051201 In re Marriage of Evans

The appeal filed June 21, 2007, is dismissed because appellant did not timely deposit costs for preparing the record on appeal.

D051080 In re Wilkerson on Habeas Corpus

The petition is denied.

D051330 In re Burnett on Habeas Corpus

The petition is denied.

D050943 In re Brown on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Haller, McIntyre and O'Rourke.

Joel Brown contends inmates at Calipatria State Prison are being denied their "constitutionally protected right to exercise" which he claims is 10 hours per week. The record Brown provided shows he has not exhausted his administrative remedies and the record is inadequate for review. The court notes under California Code of Regulations, title 15, section 1065, subdivision (a), facility administrators are required to develop written policies and procedures for an exercise and recreation program "which will allow a minimum of three hours of exercise distributed over a period of seven days. Such regulations as are reasonable and necessary to protect the facility's security and the inmates' welfare shall be included in such a program."

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 8, 2007 (Continued)

D050936 In re King on Habeas Corpus

The petition is denied.

D050945 In re Nelson on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 9, 2007

D050941 In re Williams on Habeas Corpus

The petition is denied.

D050862 In re Stevens on Habeas Corpus

The petition is denied.

D051249 McSherry et al. v. Skinner

No Civil Case Information Statement and copy of a judgment having been filed with this court, the appeal is DISMISSED.

D050731 Angeles Chemical Company, Inc. v. Hanover Insurance Company

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D051200 Kozicki et al. v. Cissna

Because appellant did not timely pay the filing fee, the appeal is DISMISSED. (Cal. Rules of Court, rule 8.100(c)(5).)

D046906 K2 Construction, Inc. v. Anjani Investments Inc., et al

D046953 K2 Construction, Inc. v. Anjani Investments Inc., et al.

The judgment is reversed as to K2's stop notice cause of action against Comerica and the judgment and posttrial orders are reversed insofar as (1) the jury awarded K2 (a) more than \$80,125 in supervision costs, (b) \$25,411 for framing work at the project performed by Thunder Basin, (c) \$2,627 for door installation work performed by Damac and (d) \$18,279 for subcontract work and materials provided by Alpha Site Logistics, Kris Kraft Cabinets, Ben Montoya Painting, Early Detection Security, Imperial Irrigation District, Nation Rents, Pacific Bell and Yosemite Water; and (2) the trial court (a) denied K2 prejudgment interest against Anjani and (b) taxed the bond premium as an element of K2's costs. In all other respects, the judgment and orders are affirmed. We remand the matter for further proceedings, if necessary, and for the entry of an amended judgment consistent with this opinion. Comerica is awarded its costs of appeal against K2; K2 and Anjani are each to bear their own appellate costs. McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D050424 In re Talia U. et al., Juveniles

The order is affirmed. Irion, J.; We Concur: O'Rourke, Acting P.J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
August 10 2007

D049787 People v. Graham

The judgment is affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D050938 Solar Turbines, Inc. v. Workers' Compensation Appeals Board/Enright

The petition is denied.

D050967 Haynes-Pitts v. Workers' Compensation Appeals Board/San Diego Unified School District

The petition is denied.

D050149 People v. Phillips

Appeal dismissed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D049214 People v. Hill

The judgment is affirmed. McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D050861 In re Wallach on Habeas Corpus

The petition is denied.

D050846 In re Karissa F. et al.

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.412(d)(1)(A), and 8.416(g). The appeal is dismissed.

D049515 People v. Holbrook

The judgment in SCD 195927 is reversed. The judgment in SCD 187211 is affirmed and the case is remanded to the trial court so that it may correct the abstract of judgment and minutes to delete references to the strike. The court shall forward the amended abstracts of judgment to the Department of Corrections and Rehabilitation. Irion, J.; We Concur: Benke, Acting P.J., Nares, J.